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14 UNITED STATES DISTRICT COURT

15 SOUTHERN DISTRICT OF CALIFORNIA

16 ASUSTEK COMPUTER, INC.,

Case No. 08-CV-602-JM (WMC)

17 Plaintiff,

**FIRST AMENDED COMPLAINT FOR
 18 PATENT INFRINGEMENT**

19 v.
 20 INTERNATIONAL BUSINESS MACHINES
 21 CORPORATION,

DEMAND FOR JURY TRIAL

22 Defendant.

23 Plaintiff ASUSTeK Computer, Inc. (hereinafter Plaintiff or "ASUS") hereby files this
 24 complaint against Defendant International Business Machines Corporation (hereinafter "IBM"),
 25 and alleges as follows:

26 **PARTIES**

27 1. Plaintiff ASUSTeK Computer, Inc. is a Taiwanese corporation with its principal
 28 place of business located at 4F No. 150 Li-Te Road, Peitou, Taipei 112, Taiwan, Republic of
 China (R.O.C.).

29 2. On information and belief, Defendant IBM is a New York corporation with its
 30 principal place of business located at New Orchard Road, Armonk, New York 10504.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the cause of this action pleaded herein under 28 U.S.C. §§ 1331 and 1338(a) because the action concerns a federal question arising under the patent laws of the United States, including 35 U.S.C. § 271.

4. Venue is proper in this judicial district under 28 U.S.C. §§1391(b), (c) and 1400(b) because, among other reasons, IBM is subject to personal jurisdiction in this judicial district, has committed acts of infringement in this judicial district, and has a regular and established place of business in this judicial district.

5. Upon information and belief, IBM has placed infringing products into the stream of commerce by shipping those products into this judicial district or knowing that such products would be shipped into this judicial district.

FIRST CLAIM FOR RELIEF
INFRINGEMENT OF U.S. PATENT NO. 6,041,346

6. The allegations of paragraphs 1-5 are incorporated herein by reference.

15 7. ASUS is the owner by assignment of all right, title, and interest in and to the United
16 States Patent No. 6,041,346, entitled “Method and system for providing remote storage for an
17 internet appliance” (hereinafter “the ‘346 patent”), which was duly and legally issued on March
18 21, 2000. A true and correct copy of the ‘346 patent is attached to this Complaint as Exhibit 1.

19 8. IBM has infringed and continues to infringe directly and/or indirectly, literally
20 and/or under the doctrine of equivalents, one or more claims of the '346 patent under 35 U.S.C.
21 Section 271, by making, using, offering to sell, or selling within the United States, including this
22 judicial district, or importing into the United States, storage area network hardware and software
23 products, including but not limited to IBM TotalStorage SAN256B, IBM System Storage N7000
24 Modular Disk Storage System, and Tivoli Storage Area Network Manager.

25 9. IBM's unlawful infringement of the '346 patent, ASUS has suffered, and will
26 continue to suffer, irreparable harm and damages.

27 10. IBM's past and continued acts of infringement have injured and damaged ASUS,
28 and will continue to cause irreparable injury to ASUS unless and until enjoined by this Court

SECOND CLAIM FOR RELIEF
INFRINGEMENT OF U.S PATENT NO. 7,103,765

11. The allegations of paragraphs 1-5 are incorporated herein by reference.

12. ASUS is the owner by assignment of all right, title, and interest in and to United States Patent No. 7,103,765, entitled "Method and system for providing a modulized server on board" (hereinafter "the '765 patent"), which was duly and legally issued on September 5, 2006. A true and correct copy of the '765 patent is attached to this Complaint as Exhibit 2.

13. IBM has infringed and continues to infringe directly and/or indirectly, literally and/or under the doctrine of equivalents, one or more claims of the '765 patent under 35 U.S.C. Section 271, by making, using, offering to sell, or selling within the United States, including this judicial district, or importing into the United States, server hardware and software products, including but not limited to IBM server blades such as BladeCenter HS21.

14. IBM's unlawful infringement of the '765 patent, ASUS has suffered, and will continue to suffer, irreparable harm and damages.

PRAYER FOR RELIEF

WHEREFORE, ASUS prays that this Court enters judgment and provides relief as follows:

1. That IBM has infringed the '346 patent and the '765 patent;

2. That IBM, and its officers, agents, servants, employees, and those in active concert or participation with them directly or indirectly, be enjoined from infringing the '346 patent and the '765 patent;

3. That IBM be ordered to account for and pay to ASUS the damages resulting from IBM's infringement of the '346 patent and the '765 patent, together with interest and costs, and all other damages permitted by 35 U.S.C. § 284, including enhanced damages up to three times the amount of damages found or measured;

4. That this action be adjudged an exceptional case and IBM be awarded its attorneys' fees, expenses and costs in this action pursuant to 35 U.S.C. § 285; and

5. That ASUS be awarded such other equitable or legal relief as this Court deems just and proper under the circumstances

DEMAND FOR JURY TRIAL

Defendant ASUS hereby demands a jury trial on all claims and issues in this action.

DATED: May 16, 2008

FISH & RICHARDSON P.C.

By:

~~John P. Schnurer
Cheng (Jack) C. Ko
Ryan P. O'Connor~~

Attorneys for Plaintiff,
ASUSTeK Computer, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on May 16, 2008 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

s/ John P. Schnurer
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